

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for authority to increase its rates for the generation )  
and distribution of electricity and other relief. )  
\_\_\_\_\_ )

Case No. U-17990

At the May 20, 2016 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner

**ORDER**

**Procedural History**

On March 1, 2016, Consumers Energy Company (Consumers) filed an application seeking an increase of its rates for the generation and distribution of electricity and other relief. On April 5, 2016, Phil Forner filed an application requesting leave to intervene in the case. On April 12, 2016, a prehearing conference was conducted by Administrative Law Judge Dennis W. Mack (ALJ), wherein Mr. Forner's application was denied. Mr. Forner appealed the denial on April 26, 2016.

**Positions of the Parties**

In his application for leave to appeal, Mr. Forner asserts that he, by right, is an interested party in Consumers' rate case. Citing MCL 460.6a(1) and MCL 460.6a(2)(a), Mr. Forner argues that he is, therefore, entitled to a full and complete hearing, with the accompanying prerogative to cross-examine and present arguments. He indicates that his sole interest in the case is to raise issues

concerning Consumers' appliance service plan (ASP) as related to MCL 460.10a(7), MCL 460.10a(8), and the Code of Conduct that the Commission adopted in the December 4, 2000 order in Case No. U-12134. Mr. Forner contends that Consumers' request for approval of expenses related to its ASP renders Mr. Forner's denial of intervenor status illegal.

Consumers filed a response to Mr. Forner's application for leave to appeal wherein the company contends that Mr. Forner has raised the ASP issue in several prior proceedings and his arguments have been rejected by the Commission.<sup>1</sup> Consumers stresses that in its June 10, 2008 order in Case No. U-15245, the Commission held that any additional claims regarding alleged Code of Conduct violations are beyond the scope of a rate proceeding, which decision has been upheld by the Court of Appeals. Further, in the appeal of the Commission's order in Case No. U-15645, the Court of Appeals also noted that in light of the fact that Mr. Forner had previously presented his claims of ASP subsidization to the Commission in Case No. U-14329 and unsuccessfully appealed that decision to the Court of Appeals, the doctrine of issue preclusion was in full force and effect, thereby barring Mr. Forner from relitigating those claims.<sup>2</sup>

#### Discussion

Rule R 792.10433(2) provides that the Commission will grant an application and review the presiding officer's ruling if any of the following provisions apply:

- (a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding.

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<sup>1</sup> See, the June 10, 2008 order in Case No. U-15245, and the November 2, 2009 order in Case No. U-15645.

<sup>2</sup> See, *In re Consumers Energy Application for Rate Increase*, 291 Mich App at 120-121, and *Forner v Public Service Commission*, unpublished opinion per curiam of the Court of Appeals dated February 19, 2008 (Docket 270941).

- (b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.
- (c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order.

In this case, because the time for a final order in a utility's general rate case proceeding is statutorily limited by MCL 460.6a to 365 days, it is important that all peripheral issues that could delay the proceedings are addressed as soon as possible. For this reason, the Commission grants Mr. Forner's application for leave to appeal.

Turning to the merits of Mr. Forner's argument, the Commission notes that on at least three prior occasions, Mr. Forner has attempted to intervene in Consumers' general electric rate cases to litigate issues concerning Consumers' operation of its ASP. In the Commission's orders in Case Nos. U-15245, U-15645, and U-16794, the Commission rejected Mr. Forner's efforts to litigate such issues in a rate case proceeding.

Mr. Forner contends that there is a "BRIGHT LINE DISTINCTION" between this case and his prior arguments, most notable those raised by him in Case No. U-16794. But, Consumers responds, and the Commission agrees, that the affidavit of Andrew J. Bordine, Consumers' Director of Customer Management and Grid Infrastructure, which is attached to Consumers' answer to Mr. Forner's appeal, demonstrates that the alleged "BRIGHT LINE DISTINCTION" relied upon by Mr. Forner in this case is traceable to a mistake that was corrected prior to the ALJ's ruling on Mr. Forner's application for leave to appeal. The correction made by Mr. Bordine explains that Consumers is not requesting recovery of any expenses related to the ASP in this filing. According to Mr. Bordine's affidavit and a corrective filing made by Consumers on April 11, 2016, a page of Mr. Bordine's direct testimony that had contained a description of the Business

Development and Customer Solutions section has been corrected to clarify that Consumers was not requesting recovery of any expenses related to the ASP in this proceeding.

Given this correction, the fact that the Commission has repeatedly indicated to Mr. Forner that such issues do not belong in a utility's general rate case proceeding, and the fact that the Commission's prior rulings have been upheld on appeal by the Court of Appeals in *In re Consumers Energy*, 291 Mich App 106; 804 NW2d 574 (2010)<sup>3</sup> and *In Re Application of Consumers Energy to Increase Rates*,<sup>4</sup> unpublished per curiam opinion dated October 30, 2012 (Docket No. 296640), the Commission finds that the ALJ's decision to deny Mr. Forner's petition to intervene in this proceeding should be affirmed.

THEREFORE IT IS ORDERED that the application for leave to appeal filed by Phil Forner is granted, but the relief requested is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

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<sup>3</sup> See, <http://efile.mpsc.state.mi.us/efile/docs/15245/0562.pdf>.

<sup>4</sup> See, <http://efile.mpsc.state.mi.us/efile/docs/15645/0591.pdf>.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION



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Sally A. Talberg, Chairman



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Norman J. Saari, Commissioner

By its action of May 20, 2016.



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Mary Jo Kunkle, Executive Secretary

# PROOF OF SERVICE

STATE OF MICHIGAN )

Case No. U-17990

County of Ingham )

Lisa Felice being duly sworn, deposes and says that on May 20, 2016 A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

*Lisa Felice*

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Lisa Felice

Subscribed and sworn to before me  
this 20th day of May 2016

*Steven J. Cook*

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Steven J. Cook  
Notary Public, Ingham County, Michigan  
As acting in Eaton County  
My Commission Expires: April 30, 2018

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